



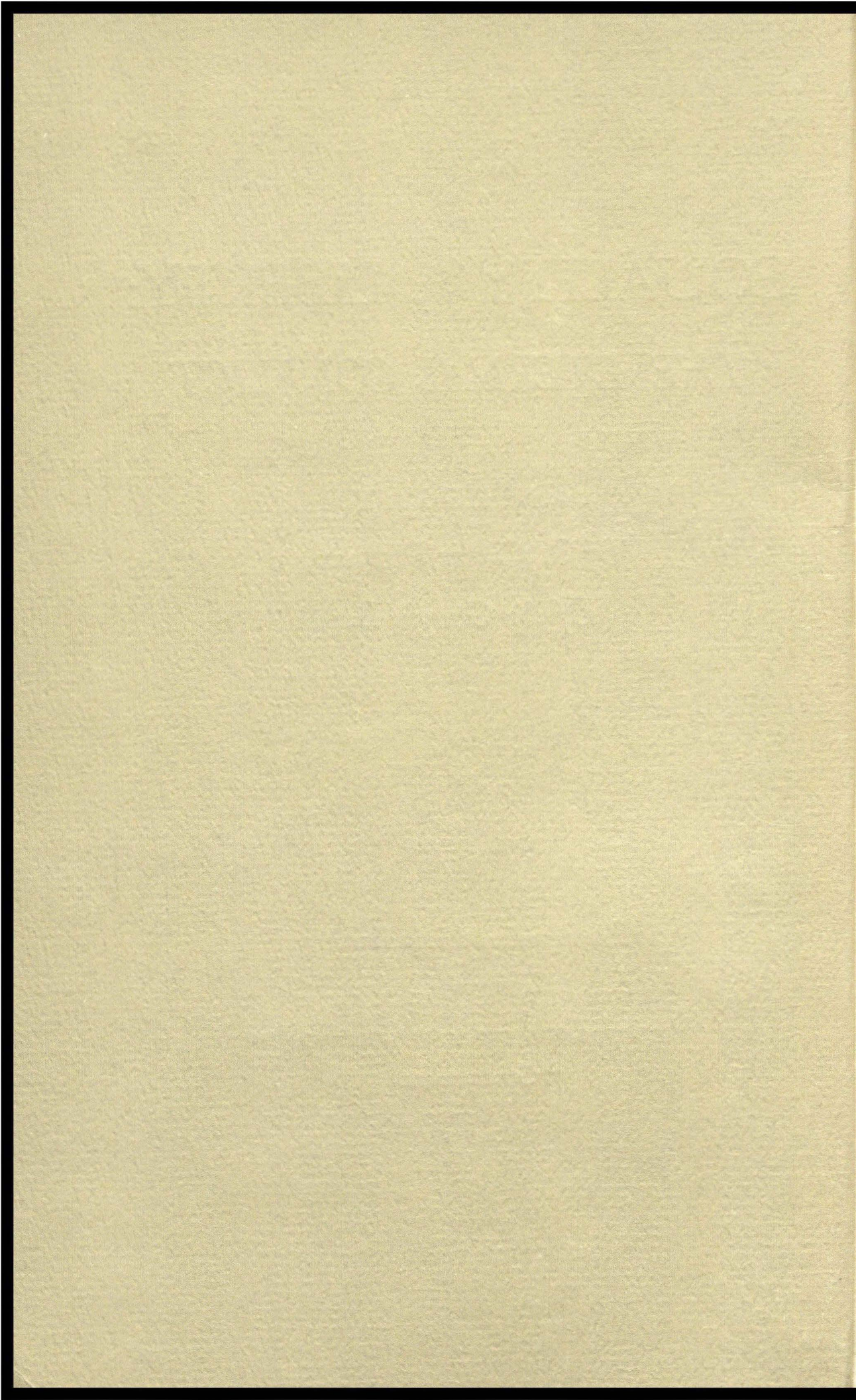
EQUALITY v. LIBERTY:
THE ETERNAL CONFLICT

AN ESSAY

By R. Carter Pittman,
Of the Georgia Bar



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EQUALITY *v.* LIBERTY: THE ETERNAL CONFLICT

By R. Carter Pittman

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FOREWORD

FEW of the great phrases of American political history have generated as much continuing controversy as the famous line in the Declaration of Independence which asserts as a self-evident truth that "all men are created equal."

Considered literally, the statement is palpable nonsense; here on earth, at least, all men manifestly are not created equal. Considered metaphysically, the line may have meaning for the theologian, but the student of constitutional theory is left a little out of it; it is not easy for him to speak with authority on the sight of men "in the eyes of God."

But if the statement is not to be construed literally, nor to be tackled metaphysically, what are mere mortals to make of it? In the development of a peculiarly American political philosophy, the importance of the line is not to be denied. It might be treated poetically, remembering the admonition of Coleridge that poetry is best when it is not perfectly understood, but the Declaration was not intended poetically; it was intended politically.

R. Carter Pittman, a senior member of the Georgia bar, plunges into these questions in the brilliant essay here reproduced. His analysis of the conflict between liberty and equality, in terms of political and constitutional history, appeared first in the *Journal of the American Bar Association*. It is reprinted with the *Journal's* generous permission. Whether he agrees or disagrees with Mr. Pittman's views, the student of political tradition will find this essay, we believe, a stimulating contribution to informed discussion of a constantly absorbing theme.

JAMES J. KILPATRICK,
Chairman of Publications,
Virginia Commission on Constitutional Government.

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EQUALITY v. LIBERTY: *THE ETERNAL CONFLICT*

*By R. Carter Pittman**

Inequality will exist as long as liberty exists. It unavoidably results from that very liberty itself.

—ALEXANDER HAMILTON.

URING recent years many articles have appeared in learned journals in which it is stated in one way or another as a "fundamental principle" that America was founded upon the proposition or conceived in the philosophy that "all men are created equal." For a convenient text we quote from an article by Charles H. Davis, Justice of the Illinois Supreme Court, appearing in the March, 1959, issue of the American Bar Association *Journal* entitled "Constitutional Law: The States and the Supreme Court." While discussing the various proposals to limit the jurisdiction of the Supreme Court, on page 311, he said:

The worth of such proposals should be viewed in the light of a recurrence to the fundamental principles of our civil government. America was conceived in the philosophy "That all men are created equal."

Similar statements are to be found in speeches made or read by Presidents, Vice Presidents, and members of the Congress.

* Of the Georgia Bar. Mr. Pittman's essay is reprinted by special permission from the *Journal of the American Bar Association* for August, 1960.

The doctrine of human equality has found its way into judicial decisions of our highest courts.

In its official *Report* of September 9, 1959, the Civil Rights Commission asserted on page 3:

The Declaration of 1776 recognized as the first principle of our independence that all men are created equal.

Vice Chairman Robert G. Storey and Commissioners John S. Battle and Doyle E. Carlton dissented, because "such assertions ignore historical fact" but, nevertheless, this assertion and others of like content were officially embodied in the *Report* by vote of three to three and the dissent merely footnoted.

Many of the so-called "Civil Rights" bills introduced in the Congress in recent years recite as the basis and foundation for their provisions the doctrine that all men are equal.¹ Human equality was the doctrinal basis for *Brown v. Board of Education* of May 17, 1954, and subsequent integration decisions.²

American high school and college textbooks are loaded with equalitarian propaganda, all pointing to the Declaration of Independence equality clause as the "American dream" or the "American ideal" or the "American creed." For example in *Democracy vs. Communism* (1957) by Kenneth Colegrove and others, prepared under the auspices of The Institute of Fiscal and Political Education, as a high school text to explain the differences between democracy and communism (now widely used in American public schools) it is stated on page 31: The Fathers of our nation accepted as a basis for the Constitution the Declaration of Independence.

and on page 43:

The Declaration of Independence states that "all men are created equal," and it means exactly what it says.

To appropriate the words of Justice Davis, the equalitarian

doctrine itself "should be viewed in the light of a recurrence to the fundamental principles of our civil government." Given a little patience and an open mind the truth may be seen in such a light.

No one questions the right of all men to equal justice under law, but propagandists have carried the doctrine beyond equality of rights to equality of things, and men are heard to proclaim human equality who would revolt at the suggestion that all birds, all fish, all cattle, all dogs or all race horses are equal. Of course, all men are *not* created equal any more so than are all other members of the animal kingdom. Even if they are *created* equal, creation ends when life begins, and life is always unequal. Nevertheless, we are told over and over again and again that all men are equal and the Declaration of Independence is cited as final authority.

The Declaration of Independence never became living law in America, and no provision of the Federal Constitution or Bill of Rights can be traced to it and, as this essay will demonstrate, its influence on State constitutions and bills of rights has been insignificant. It was written to serve the temporary purposes of a sanguinary conflict. It was and perhaps will ever be history's most effective piece of propaganda, but it neither grants nor protects human rights.

The first paragraph of the Declaration speaks of the necessity "for one people . . . to assume . . . the *separate and equal* station to which the laws of nature . . . entitle them," thus reaffirming the *separate and equal* station doctrine established by nature under which all great people have progressed throughout history. Then follows, ". . . all men are created equal," equating "one people" with "all men" and "created" with "laws of nature." No one who helped to write it or who voted to adopt it ever asserted the doctrine of human equality either before or after July 4, 1776, but the Declaration of In-

dependence, like the Constitution, has "taken on new meaning" by the application of "new philosophy" and "modern authority."

At about the time when Thomas Jefferson, Benjamin Franklin, John Adams, Robert Livingston and Robert Sherman were named as a committee to write the Declaration of Independence, to accord with instructions from the Virginia Convention, which met in May, 1776, George Mason's original draft of the Virginia Declaration of Rights was a popular subject of conversation in Philadelphia and all over America. A draft of ten paragraphs of Mason's original was mailed to Richard Henry Lee by T. L. Lee from Williamsburg on May 25. It is among the *Mason Papers* in the Library of Congress at this time. The original was extended by Mason into the committee draft in eighteen paragraphs and was reported on May 27 and published in Dixon's *Virginia Gazette* of June 1. It was published in Philadelphia newspapers on June 6, June 8 and June 12 of 1776.³ It was published and republished in newspapers and magazines all over America and in England.⁴

Jefferson, to whom was assigned the task of writing the preamble to the Declaration of Independence, took the first three paragraphs of Mason's original draft of the Virginia Declaration of Rights and rearranged and rephrased them to make a Preamble for the Declaration of Independence.

The preamble for the proposed Virginia Declaration of Rights as published stated that it was "the basis and foundation" of government in Virginia. Its first paragraph was:

That all men are born equally free and independent and have certain inherent natural Rights, of which they cannot, by any Compact, deprive, or divest their Posterity; among which are the Enjoyment of Life and Liberty, with the Means of acquiring and possessing Property, and pursuing and Obtaining Happiness and Safety.

The Virginia Convention, before officially adopting Mason's original or the committee draft, changed the first paragraph to read:⁵

That all Men are by Nature equally free and independent and have certain inherent Rights of which when they enter into a State of Society, they cannot, by any Compact, deprive or divest their Posterity; namely, the Enjoyment of Life and Liberty with the Means of acquiring and possessing Property, and pursuing and obtaining Happiness and Safety.

Jefferson never saw that version until he returned to Virginia long after the Declaration of Independence was adopted. Jefferson's rendition from the Mason original was:

That all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.

So the "basis and foundation" of the first free government in America was *equality of freedom and independence*, while the Jefferson perversion was *equality at creation*. The Declaration of Independence does not say that all men are equal. It says that they were *created* equal. There equality ends.

All America thought alike on the subject in 1776. Benjamin Franklin, a few days after the Declaration was promulgated, helped to write a Declaration of Rights for the State of Pennsylvania. He copied Mason's original Virginia Declaration of Rights almost verbatim. His first paragraph was:

That all men are born equally free and independent, and have certain natural, inalienable rights, amongst which are, the enjoying and defending Life and Liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

So the basis and foundation of Franklin's government was the same as that of Mason's Virginia. It was *equality of freedom and independence*.

The Massachusetts Declaration of Rights contains the phrase "All men are born free and equal . . ." The *Writings of John Adams* (Volume 4, page 220) reveal that the original draft prepared by the Committee of which John Adams was chairman, in 1779, exactly copied George Mason's original with the words "That all men are born equally free and independent."

Before the Massachusetts Declaration was officially adopted John Adams embarked for France and on the twenty-ninth day of September, 1779,⁶ the Convention struck out the word "equally" and the word "independent" and substituted for the word "independent" the word "equal" making the clause read as it now reads: "All men are born free and equal." John Adams was embittered by the change and, as we shall later see, had he been present it would not have occurred.⁷ No other State adopted a human equality clause of any character until after 1835.

New Hampshire and North Carolina also copied Mason's original while not one of the thirteen copied from the Declaration of Independence.

When the United States Constitution was under discussion at the Philadelphia Constitutional Convention in 1787 not one delegate from any of the twelve States represented suggested that "all men are equal" either at creation or in life. On June 26, 1787, on the floor of the convention Alexander Hamilton, the patron saint of the Republican Party, said:

Inequality will exist as long as liberty exists. It unavoidably results from that very liberty itself.

Apparently every mind in the Convention assented, because not a word may be found in all the *Notes of Debates* to indicate that any delegate believed in the doctrine of human equality in 1787.

So far as we have found, the doctrine of human equality was not suggested by any one in the battle that raged over ratification and a bill of rights. In the South Carolina Ratifying Convention of 1788, Charles Cotesworth Pinckney, a member of the Philadelphia Convention of 1787, explained that one of the reasons why no bill of rights was adopted in Philadelphia which “. . . weighed particularly, with the members from this State” was that “such bills generally begin by declaring that *all men are by nature born free*. Now, we should make the declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves.”⁸ If “born free” was rejected in Philadelphia, what chance would one expect for “created equal”?

The Constitution proclaims in its preamble that it was established “to . . . insure domestic tranquility . . . and secure the blessings of liberty.” Nowhere does it hint a purpose to insure or impose equality of men or things. The due process clause of the Fifth and Fourteenth Amendments, which render life, liberty and property immune from attack except by the orderly processes fixed by law, insures that American governments may not impose equality.

The bills of rights of eighteen of the forty-eight contiguous States now use the Mason phrase, “equally free and independent” as set forth in Mason’s original draft and that of Virginia’s Convention of June 12, 1776. Eight prefaced the phrase with the word “born,” as Mason originally wrote it.⁹ Ten use the exact words of the official Virginia Convention draft, prefacing the phrase with the words “by nature,” instead of the word “born.”¹⁰

Arkansas uses the phrase “are created equally free and independent.” Sixteen States have no equality clause whatever.¹¹

The bills of rights of Idaho, Iowa, Kentucky and Nevada contain the clause: “all men are by nature free and equal,”

revealing the influence of both Mason's draft, the official draft and the Declaration of Independence.

Connecticut and Oregon put it this way: "That all men when they form a social compact, are equal in rights."

Texas says the same thing except it substituted "have equal rights" for "are equal in rights."

Florida uses Aristotle's phrase, "equal before the law."¹²

Kansas guarantees "equal . . . rights," and

Wyoming "equality of . . . rights."

Of the constitutions and bills of rights of the forty-eight States as of 1917 (the last available printing) only two use the equality clause of the Declaration of Independence. Those two are Indiana and North Carolina. It first appears in Section 1 of Article I of Indiana's Bill of Rights, adopted in 1851,¹³ as follows:

We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness . . .

Indiana, without deeming it necessary to change the equality clause of her Bill of Rights, amended her Constitution in 1881 so as to prevent further migration of Negroes into the States and so as to deny suffrage to Negroes already in the State.¹⁴

The contrast between *inequality* necessarily implicit in the amendments, and the doctrine of *equality* at creation in the Bill of Rights did not seem to bother the people of Indiana at a time so recent as to be remembered by some now living.

The other State is North Carolina whose Bill of Rights of 1868, and now, recites in its first clause:¹⁴

That we hold it to be self-evident that all men are created equal . . .

For decades after 1776 North Carolina's Bill of Rights proclaimed "that all men are born equally free and independent." There must surely be some explanation as to why people who had lived under maxims of George Mason since 1776 should suddenly change in 1868. The Constitution of 1868 was framed in a convention called under the reconstruction acts of Congress, by Major General Canby. It assembled at Raleigh January 14, 1868. Federal soldiers stood guard over the deliberations. The same equality clause was inserted in the bills of rights of many Southern States while the natural leaders of the white people were held at bay by federal bayonets. See for examples, the Alabama Bill of Rights of 1867, the Louisiana Bill of Rights of 1868, South Carolina's of 1868 and Florida's of 1868.¹⁵

As is well known by those the least familiar with American history, shortly after the Federal troops were withdrawn, the white people of the South quickly expelled the carpetbaggers and subdued the scalawags and recaptured the State governments. Every one of those States, with one exception, promptly called a constitutional convention and adopted its constitution according to its own wishes in place of those imposed upon it by military might. *All struck the doctrine of human equality from their constitutions, except North Carolina.* Why North Carolina should have retained that doctrine in her Bill of Rights is a mystery. There it stands on parchments as a horrid fragment of feudal despotism imposed upon a proud and helpless people by superior force.

In his famous Gettysburg Address in 1863, Lincoln recited from the Declaration of Independence in this context:

Fourscore and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

At the hour when Lincoln made that speech the Declaration of Rights of his home State of Illinois proclaimed in the words of George Mason:

That all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, and of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

Lincoln's task in 1863 was much like Jefferson's in 1776. Equally they needed a phrase that would arrest the imagination and stir emotions. When Lincoln recited from the Declaration few remembered the phrase. For near a century before 1863 it was seldom mentioned. In 1863 as in 1776 it kindled a flame that spread. It aroused emotions of sympathy. That is the primary reason for and the most powerful result of propaganda. The maxim "All is fair in love and war" is not alone for Machiavelli.

Only a year before, on August 14, 1862, President Lincoln demonstrated that he was not an equalitarian. Speaking to a large group of Negro delegates in Washington, he said:¹⁶

You and we are different races. We have between us a broader difference than exists between almost any other two races.

Whether it be right or wrong I need not discuss; but this physical difference is a great disadvantage to us both, as I think . . .

Even when you cease to be slaves, you are yet far removed from being placed on an equality with white people. On this broad continent not a single man of your race is made the equal of a single man of ours. Go where you are treated best, and the ban is still upon you. I cannot alter it if I would. . . See our present condition—the country engaged in war, our white men cutting one another's throats, and then consider what we know to be the truth. But for your race among us there would be no war, although many men engaged on either side do not care for you one way or the other. It is better for us both, therefore, to be separated.

The Declaration of Rights of California, home State of Chief Justice Warren of the Supreme Court, is almost a verbatim copy of the official Virginia Declaration of Rights. It proclaims:

All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety and happiness.

No member of the Supreme Court can find support for equalitarianism in the fundamental laws of his home State.

The constitutions of the various republics of the world to be found in three volumes of Peaslee's *Constitutions of Nations*, reveal that the doctrine of human *equality* has been universally rejected in the constitutions of the non-Communist world. The constitutions of a few Communist countries proclaim the doctrine of human equality but none of the living constitutions of free republics, so far as we have found, now proclaims or perpetuates that doctrine. As an interesting illustration, the Constitution of the Negro republic of Liberia, adopted July 26, 1847, and still of force, which forbids the ownership of land by members of the white race, has as the first paragraph of its Bill of Rights almost the exact words of the George Mason original:¹⁷

All men are born equally free and independent and have certain natural, inherent, and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

Thirty-one of the constitutions of the nations of the world contain Aristotle's equality clause, as does Florida, to-wit:¹⁸
Equal before the law.

For all men to be "equally free and independent" they must

be "equal before the law." There is no such thing as freedom and independence under men. It exists under law or not at all. The Fourteenth Amendment guaranty that no State shall deprive any citizen of "equal protection of the laws" is but another way of expressing man's inherent right to *equality of freedom and independence* under law.

The same concept of equality before the law is expressed, sometimes in the words of Mason, and sometimes in the words of Aristotle, and protected by safeguards, in more than seventy of the eighty-three constitutions edited by Peaslee in 1950. Only four contain the concept of cultural, economic or social equality that Myrdal found to be the "American creed." Those four are Guatemala,¹⁹ the Mongol Peoples Republic,²⁰ the Ukrainian Soviet Socialist Republic,²¹ and the Union of Soviet Socialist Republics.²²

Mongolia puts it this way: "Equal rights in all spheres of the state, economic, cultural, and sociopolitical."

Russia puts it this way: "Equality of rights of citizens of the U.S.S.R. irrespective of their nationality or race; in all spheres of economic, government, cultural, political and other public activity."

While Russia has partially succeeded in reducing most of her people to the level of degradation approaching cultural "equality," she has been careful not to interfere with the segregation practices and racial *mores* of her people. Even Russian despots have more sense than to attempt a thing like that.

In the summer of 1955 Justice Douglas and Robert F. Kennedy, an attorney for a Senate Committee, toured Russia. Mr. Justice Douglas found something he didn't fully tell.²³ Mr. Kennedy spilled it in the *New York Times Magazine* of Sunday, April 8, 1956. Here is a part:

In every city that we visited there were two different school systems. There was one set of schools for the local children—

those of a different color and race from the European Russian children. State and collective farms were operated by one group or the other, rarely by a mixture of both.

Although work is supposedly being done to minimize the differences, many of the cities we visited were still split into two sections, with the finer residential areas being reserved for the European Russians. European Russians coming into the area receive a 30 per cent wage preferential over local inhabitants doing the same jobs. The whole pattern of segregation and discrimination was as pronounced in this area as virtually anywhere else in the world.

A distinguishing feature of communism is that it never practices what it preaches. It always says one thing to distract attention as it does another.

Karl Gunnar Myrdal, whose book, *American Dilemma*, is now *corpus-juris-tertius* and "modern authority" in the Supreme Court's pseudo-socio-law, defined the "American creed," on page 4 of his book, as the "fundamental equality of all men." On pages 4 and 9 he unwittingly copied Hamilton to admit that liberty and equality cannot co-exist because, as he insists, there is an "inherent conflict" between them and "equality is slowly winning." After defining the "American creed" as "the fundamental equality of all men" he says that its tenets were written into the Declaration of Independence, the preamble of the Constitution, the Bill of Rights and into the constitutions of the several States. The ideals of the American creed have thus become the highest law of the land.

He must have known that the Federal Constitution and Bill of Rights and those of the States were written "to secure the blessings of liberty" and that neither says a word about securing human equality.

Myrdal is not the only one to try to make an equalitarian Marxist out of Jefferson. On one of the huge marble panels on the left as one enters the Jefferson Memorial in Washing-

ton, D. C., is a fragment of one of Jefferson's sentences. As inscribed upon the panel the words are,

Nothing is more certainly written in the book of fate than that these people are to be free.

As written by Jefferson there was no period, but there was a semi-colon and the sentence continued:

nor is it less certain, that the two races, equally free, cannot live in the same government. [*The Jefferson Cyclopedia*, page 816.]

That clause was deliberately left off that panel by some modern equalitarian.

On pages 12 and 13 Myrdal said:

The worship of the Constitution . . . is a most flagrant violation of the American creed which is strongly opposed to stiff formulas.

On page 18 Myrdal finds judges and lawyers to be anathema to those indoctrinated with the "American creed" saying:

. . . the judicial order is in many respects contrary to all their inclinations.

Naturally so *because liberty may not exist without a Constitution sustained, as written, by an emancipated judiciary selected for learning and honor. Equality may be established only where the judiciary is so prostituted that it will undermine that which its members take an oath to support.*

Why did Thomas Jefferson, Benjamin Franklin and John Adams, the sub-committee that drafted the Declaration of Independence, use a phrase so susceptible to misuse and misconstruction as "all men are created equal"? The answer to that question is partially explained in the *Writings of John Adams*. Prior to 1776 two half-demented philosophers of France, named Helvetius and Rousseau,²⁴ had maintained that

"all men are equal," and had preached "the brotherhood of man." France was saturated with it. That philosophy had caught on with the simple-minded peasants and philosophers of France. Nothing appealed so powerfully to the ignorant French peasants as the doctrine that "all men are equal" or are brothers. To the peasant that meant that *all men are kings*. The slogan was echoed all over France: "Every man a king!" The thought didn't occur to them that if all men are kings, then all might be peasants or slaves.

The Declaration of Independence recites that its purpose was "to enable the States to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do." Those who wrote it and those who signed it knew that it was written for the principal purpose of bringing France into the Revolution on the side of America.²⁵ The war had been going on for a full year. America was in an unequal struggle for life over death. Washington had been at the head of America's armies a year before July 4, 1776. Washington's task looked hopeless. Jefferson's task was to win the case for America by writing a powerful preamble that would appeal to the *hearts*—not the minds—of the French people. Since the doctrine of human equality had become a popular creed in France and since Helvetius and Rousseau were the prophets of that creed, Jefferson directed the Declaration at the hearts of the French people by declaring that "all men are created equal."

In their old age Thomas Jefferson and John Adams progressed from political rivals to bosom friends. On the thirteenth day of July, 1813, Adams' mind went back to July 4, 1776, when he and Jefferson labored together in Philadelphia. He wrote to Jefferson that day:²⁶

Inequalities of mind and body are so established by God Al-

mighty in his constitution of human nature, that no art or policy can ever plane them down to a level. I have never read reasoning more absurd, sophistry more gross, in proof of the Athanasian creed, or transsubstantiation, than the subtle labors of Helvetius and Rousseau to demonstrate the natural equality of mankind. *Jus cuique*, the golden rule, do as you would be done by, is all the equality that can be supported or defended by reason or common sense.

About a year later, on the fifteenth day of April, 1814, John Adams wrote to John Taylor of Virginia:²⁷

Inequalities are a part of the natural history of man. I believe that none but Helvetius will affirm, that all children are born with equal genius.

That all men are born to equal rights is true. Every being has a right to his own, as clear, as moral, as sacred, as any other being has. This is as indubitable as a moral government in the universe. But to teach that all men are born with equal powers and faculties, to equal influence in society, to equal property and advantages through life, is as gross a fraud, as glaring an imposition on the credulity of the people, as ever was practiced . . . by the self-styled philosophers of the French Revolution. For honor's sake, Mr. Taylor, for truth and virtue's sake, let American philosophers and politicians despise it.

Much has been falsely written and more has been mistakenly said about the influence of the human equality doctrine of the Declaration of Independence on France. We may not complete the story about America without telling the story of France.

In 1783 Benjamin Franklin translated and prepared for publication a French edition of the Declaration of Independence and all American State bills of rights and constitutions adopted up to that time, including the committee draft of Virginia's Declaration of Rights and Constitution, both written by George Mason—but not the official draft of the Virginia Declaration which Franklin did not have because it was not

published in any form for distribution outside of Virginia until well into the 1800's. As is well known, that book greatly influenced the French Revolution.²⁸ In August, 1789, France adopted the celebrated French Declaration of Rights which copied much from those published by Franklin.

Since Helvetius and Rousseau had been the prophets of the creed of equalitarianism one would expect the French Declaration of 1789 to have asserted the doctrine that "all men are created equal" as did the Declaration of Independence. But, instead of following Helvetius, Rousseau or the Declaration of Independence, France rephrased George Mason's original and asserted as the first paragraph of her Declaration language which, when translated back into English, comes out: "men are born and always continue free and equal in respect of their rights." Her Declaration then defines "the natural and imprescriptible rights of man" as "liberty, property, security and resistance to oppression."²⁹

The French Revolution teaches that liberty does not reside in the power of the majority to run the state but it lies rather in the security of a minority from the arbitrary exertion of the majority exercising the powers of the state. In that bath of blood *equality* finally became the revolutionary creed. The nobility was leveled to the middle class and finally the middle class was leveled to the proletarian. The attempt to create a classless society resulted in the complete suppression of liberty. Power now moved smoothly over a level plateau. The promised liberty and freedom of the French people vanished in the dead sea of equality.

The French Declaration of August, 1789, was superseded by the French Declaration of June, 1793. The latter repealed and annulled the doctrine of George Mason and turned back to the perverted doctrine of Helvetius and Rousseau to recite that "all men are equal by nature." It defined the "natural

and inalienable" rights of men as "equality, liberty, security and property."³⁰ At last France was ready for the motto of state originally proposed by Antoine François Momoro:

Liberté, Egalité, Fraternité

It was not until the year 1940 that that cluster of inconsistencies was stricken from the tri-color of France. It was not until September 28, 1946, that France abandoned the Declaration of Rights of 1793 and went back to that of 1789. The French National Constituent Assembly in 1946 returned to George Mason and sanity in government, with this grand statement:³¹

On the morrow of the victory of the free peoples over the regimes that attempted to enslave and degrade the human person, the French people . . . solemnly reaffirm the rights and freedoms of man and of the citizen consecrated by the Declaration of Rights of 1789 and of the fundamental principles recognized by the laws of the republic.

The only revolutions that better the lot of man are those that revolve back to fundamental principles and proved maxims under which man has enjoyed *equality of freedom and independence*. Those are the mellowed fruits of historic experience gathered in her Gardens of Gethsemane. At last France "turned back the clock" from a despotism tempered with epigrams to a government in which powers are limited.

In his *Essays on Freedom and Power* (1948 edition), page 154, Lord Acton had this to say about the effects of the doctrine of equality in the French Revolution:

The deepest cause which made the French Revolution so disastrous to liberty was its theory of equality . . . With this theory of equality, liberty was quenched in blood and Frenchmen became ready to sacrifice all other things to save life and fortune.

Speaking on Charter Day at the University of California on March 23, 1907, Nicholas Murray Butler, President of Columbia University, had this to say: ³²

The political and social anarchy which Lord Acton described must be the inevitable result whenever the passion for economic equality overcomes the love of liberty in men's breasts. For the state is founded upon justice, and justice involves liberty, and liberty denies economic equality; because equality of ability, of efficiency, and even of physical force are unknown among men.

The American Revolution was kept under control by constitutions that limited power in order to preserve liberty. Virginia's Bill of Rights and Constitution were both written before the Declaration of Independence. All of the thirteen States immediately followed the example and adopted new governments. The French Revolution went out of control when it subordinated the liberties of men to the power of a government immediately responsive to equalitarian mobs. Unbridled power and liberty are in eternal enmity. As Lord Acton said, "Power corrupts and absolute power corrupts absolutely" and again, "A nation can never abandon its fate to an authority it cannot control."

When *equality* displaced *liberty* as the creed of the French Revolution, the libertarians, Turgot and Necker and LaFayette were replaced by the more radical Barnave, Condorcet and Mirabeau. In due course these were turned out by the more radical Girondins. They in their turn fell—with heads off—before the ruthless Jacobins. When the egalitarian Jacobins became supreme, the more violent devoured the others. As Camille Desmoulins, who had whipped the Paris mobs into a frenzy at the Palais Royale and the Bastille, rode trussed in a cart on his journey to lay his brilliant head under the fatal knife, he cried out to the mob:

Don't you remember me? Won't you save me! I am Camille. It was I who started this. It was I who plucked from the tree in the garden of the Palais Royale the first green badge of Revolution!

Vain was his plea in a limitless government of equalitarian flesh! He and Danton, who had helped send the moderates to the scaffold, suffered the same fate and were in turn replaced by Marat, Robespierre, Billaud, and other extreme radicals. In his turn Robespierre too was passed on the road—the road to execution.

In *Camille Desmoulins and His Wife*, Jules Claretie (translated by Mrs. Cashel Hoey, London, 1876) at page 377, writes the epitaph of Camille—and the liberty he thought might co-exist with equality:

The liberty of which Camille dreamed, that liberty which was the daughter of Athens reared under the sky of Gaul, liberty alike elegant and affable, is still far off. Until now we have preferred equality to liberty. We have let fall the substance for the shadow. What matters it to me that I am the equal of him who is not free? What matters it to me that I share the rights of one whose right it is to grovel? But equality fascinates, like a chimera, while liberty requires a loftier worship. This is the easy seduction of the one and the eternal charm of the other.

Let us then love and prefer, above all, the liberty which makes men honest and nations great. Let us love her, despite her excesses, and in order to hinder her excesses. A free people knows not the fury of nations that break their fetters and are but unchained from time to time. Slaves only flock to the Saturnalia.

When the storm of equalitarian terror passed over the horizon of French history, there were those in America interested to know what had become of those many French devotees of liberty who had fought in the American Revolution. Here is a part of what they learned: The Duc de Lauzun went to the scaffold and so did Victor de Broglie. Barbé-Marbois, a friend

of Jefferson, found safety in obscurity. Alexandre de Beauharnais was beheaded. Ethis de Corny, the friend of Washington and Hamilton, lost his mind over the excesses of the Revolution before dying mad. Custine, who distinguished himself at Yorktown, was sent to the scaffold. Arthur Dillon went to his death with these words on his lips: "*Vive le Roi!*" D'Estaing, the great French admiral, whose life story was told by Alexander Lawrence in *Storm over Savannah* (University of Georgia Press, 1951) was guillotined. LaFayette, shocked and heart broken by the excesses of the Revolution, left France to be cast as a prisoner of state into a dungeon at Olmütz. Charles de Lameth, who was wounded at Yorktown, fled the country. So did Alexandre and Theodore de Laméth. Montesquieu, the grandson of the great political philosopher, was forced to flee for safety. The Comte de Rochambeau was saved from the guillotine only by the fact that his son was an outstanding leader in the French Army. This is only a part of the story as to a part of those who helped America win its freedom. It is briefly told by Lewis Rosenthal in *America and France* (1882) page 271, *et seq.* It is more fully told in the *General and Universal Biographies of France*.

John Adams was in France during her Revolution and knew this story first hand when he wrote to John Taylor in 1814 about the doctrine of equality:

For honor's sake, Mr. Taylor, for truth and virtue's sake, let American philosophers and politicians despise it.

It is no wonder that he described that doctrine as a "gross fraud" and a "glaring imposition." James Madison, Charles W. Elliot, Henry James, Edmund Burke, John Morley and hundreds of others have exposed the specious thing, but it lives on.

At the Eighth Congress of the Communist International held in Moscow in 1928, methods to be used to destroy true

representative government by free people were fully discussed. It has been revealed over and over again³³ that advocacy of "social equality" among diverse races was there agreed upon as the surest method for the destruction of free governments in America and elsewhere. Since class hatred is the sure-fire Communist weapon to bring about internal strife and finally revolution, Moscow adopted the slogan, "all men are equal" for the contest that has already done more harm to America than can ever be repaired.

The sheer weight and effectiveness of the Communist propaganda is appalling. It is in full swing in Africa. The January, 1960, issue of the *South African Observer*, published in Cape Town, S. A., has an editorial entitled "The Heresy of Human Equality." The first paragraph tells a story that is old in America:

The most mischievous falsehood in Communist propaganda released in Africa is that all men are born equal.

It is *equality of freedom and independence* that gives unto man his opportunity to be rich or poor or to be good or bad. Equality of men leaves no choice, because if all men are equal by nature or inherently there can be no differences and no distinctions. All have an equal right to stand at the judgment bars of God and man—but all are not entitled to the same judgment. Virtue and depravity are not entitled to the same rewards on earth or in Heaven.

It is inequality that gives enlargement to religion, to intellect, to energy, to virtue, to love and to wealth. Equality of intellect stabilizes mediocrity. Equality of wealth makes all men poor. Equality of religion destroys all creeds. Equality of energy renders all men sluggards. Equality of virtue suspends all men without the gates of Heaven. Equality of love stultifies every manly passion, destroys every family altar

and mongrelizes the races of men. Equality homogenizes so that cream does not rise to the top. It puts the eagle in the hen house so that he may no longer soar. It subverts civilization by encouraging the Hottentot to claim equal footing with the cultured and intellectual in any scheme of social administration.

Equality of freedom cannot exist without inequality in the rewards and earned fruits of that freedom. There can be no equality of freedom, without leaving to all men a free and lawful choice of the "means of acquiring and possessing property, and pursuing and obtaining happiness" as Mason had it when Jefferson, like the gypsy, first defaced and then claimed as his own.

It is inequality that makes "the pursuit of happiness" something more than a dry run or a futile chase. It is inequality that makes the race. It is the father of every joy and the giver of every good gift. More than 2000 years ago Aristotle said: "Equality may exist only among slaves." Slavery is the end result of levelling. In the fruitless effort to achieve equality short of slavery the peaks must be bulldozed into the valleys to make a level plain. Such may be done only through the process now called "social engineering" which holds that the end justifies the means. Those means must ever be force, restriction, terror and a complete loss of liberty.

Equality may be imposed only in a despotism. Equality beyond the range of legal rights is despotic restraint. It is nowhere sought to be imposed except in the communistic sewers of slavish slavery. As Francis Lieber pointed out in his great work on *Civil Liberty* (page 334) 100 years ago: "Equality absolutely carried out leads to communism."

The prophecy is now being realized in America. It is *not* the "American creed." It is the creed of Marxism and the come-on of communism.

NOTES

1. For example, House Resolution 627 introduced by Mr. Celler, a member of Congress from Brooklyn, in 84th Congress, recited as its basis "the American principle of equality."

2. AN AMERICAN DILEMMA (1944) by Karl Gunnar Myrdal, cited by the Supreme Court as "modern authority" for its decision in the *Brown* case, at 347 U. S. 494, defines the doctrine of human equality as "the highest law of the land" on page 9, and on page 14 "the philosophy that all men are created equal" is "the American creed."

In *New York State Commission Against Discrimination v. Pelham Hall Apartments, Inc.*, 10 Misc. 2d 334, 341; 170 N.Y.S. 2d 750, 757 (1958), Justice Eager also treated the philosophy of human equality as the highest law of the land and upheld a clearly unconstitutional law banning discrimination in publicly assisted housing, saying:

The private ownership of private property free of unreasonable restriction upon the control thereof, is truly a part of our way of life, but on the other hand, we, as a people do hold firmly to the philosophy that all men are created equal.

For a critical discussion of the New York case see *Anti-Discrimination Legislation as an Infringement on Freedom of Choice*, by Alfred Avins, 6 NEW YORK LAW FORUM, January, 1960, 13, 16.

3. PENNSYLVANIA EVENING POST, June 6; PENNSYLVANIA LEDGER, June 8; PENNSYLVANIA GAZETTE, June 12.

4. See, as examples: MARYLAND

JOURNAL, June 12; MARYLAND GAZETTE, June 13; New York GAZETTE, June 17. Among English publications it appeared in was THE REMEMBRANCER.

5. NOTE: All quotations from State bills of rights and constitutions in this article may be found in Thorpe's *Charters and Constitutions*, (1882), or *The State Constitutions*, by Kettleborough. Thorpe contains all fundamental documents back of 1880 and Kettleborough those in force in 1917. Both are arranged alphabetically as to States and Thorpe is arranged chronologically as to each State.

6. JOURNAL OF MASSACHUSETTS CONSTITUTIONAL CONVENTION 1779, page 37.

7. NOTE: Both John Adams and Thomas Jefferson died on the exact date of the fiftieth Anniversary of the Declaration of Independence. A few days before his death a citizens committee of Quincy, Massachusetts, requested Mr. Adams, then more than 90 years years of age, to appear at a ceremony celebrating the Fourth and honoring him. He declined attendance because of feebleness, but when urged to do so he gave a toast to be presented on the Fourth and it was presented almost within his hearing, had he been able to hear, but he was then too near death. The toast was: "Independence forever!" He refused to add another word.

In I WORKS OF JOHN ADAMS, 635, his grandson, Charles Francis Adams, had this to say:

In that brief sentiment Mr. Adams infused the essence of his whole character, and of his life-long labors for his country.

8. 4 ELLIOT'S DEBATES 316.
 9. Maine, Montana, New Hampshire, New Mexico, Pennsylvania, South Dakota, Vermont and Wisconsin. See Kettleborough, *supra*.
 10. Alabama, California, Illinois, Nebraska, Nevada, New Jersey (Const.), North Dakota, Ohio, Virginia and West Virginia. (Nebraska, Nevada and New Jersey left out the word "equally".) *Ibid*.
 11. Arizona, Colorado, Delaware, Georgia, Louisiana, Indiana. (Michigan, Minnesota, Mississippi, Missouri, New York, Oklahoma, Rhode Island, South Carolina, Utah, Washington.) *Ibid*.
 12. Aristotle's *Politics*, V.
 13. 2 Thorpe, *supra*, 1073.
 14. Thorpe, *supra*.
 15. *Ibid*.
 16. 8 COMPLETE WORKS OF ABRAHAM LINCOLN (1905) 1.
- NOTE: The predominance of persistent propaganda over seldom-told facts is illustrated by the popular and prevalent view of Lincoln's Emancipation Proclamation of January 1, 1863. But few know that the Proclamation applied *only* and *expressly* to "... persons held as slaves within any State or designated part of a State, the people whereof ... [are] ... in rebellion against the United States ..."
- See: *U. S. Statutes at Large*, Vol. XII, 1268, 1269.
17. 2 Peaslee, *supra*, 364.
 18. Albania, Article 12; Argentina, Article 28; Belgium, Article 6; Brazil, Article 141; Bulgaria, Article 71; Burma, Article 13; China, Article 7; Costa Rica, Article 25; Cuba, Article 20; Czechoslovakia, Section 1; Egypt, Article 3; El Salvador, Article 23; Finland, Article 15; Haiti, Article 11; Ireland, Article 40(1); Italy, Article 3; Japan,

Article 14; Korea, Article 8; Lebanon, Article 7; Lichtenstein, Article 31; Luxembourg, Article 11; Monaco, Article 5; Nicaragua, Article 109; Panama, Article 21; Paraguay, Article 33; Rumania, Article 16; Switzerland, Article 4; Thailand, Section 27; Turkey, Article 69; Uruguay, Article 8; Yugoslavia, Article 21.

See Peaslee, *supra*.

19. Article 23.
20. Article 79.
21. Article 103.
22. Article 123. See *Constitutions of Nations*, alphabetically arranged, by Peaslee (1950).
23. In justice to Justice Douglas let it be said that whatever his racial views as between whites and blacks, he approves and justifies laws discriminating between whites and yellows and whites and reds, based on "racial traits."

See Douglas, *WE THE JUDGES* (1956) 398-399.

24. See: 1 Thomas E. Watson's *STORY OF FRANCE* (1913) Vol. I, page 680, *et seq.*; Vol. II, page 18, *et seq.*, for examples of mental derangements. As fast as his wife gave birth to children, Rousseau packed them off to foundling hospitals. He would not be bothered in his zeal to preach "equality, love, brotherhood and happiness." Helvetius, the great leveller, employed twenty-four men with guns and dogs to pull down the wretched hovels of peasants along the borders of his forested estate to guard against intrusions and to guard his hated person.

25. 2 WRITINGS OF JOHN ADAMS, page 486; Becker, *THE DECLARATION OF INDEPENDENCE* (1940) page 129.

26. 10 WRITINGS OF JOHN ADAMS 53.

27. *Ibid.*, Volume VI, page 453.
28. See 8 WIGMORE ON EVIDENCE (3d edition) 303, quoting from the writer's *History of the Privilege Against Self-Incrimination*, 21 VIRGINIA LAW REVIEW (1935) 763.
29. Peaslee, CONSTITUTIONS OF NATIONS (1950) Volume II, page 21.
30. Lieber, CIVIL LIBERTY (1880) page 532.
31. Peaslee, *supra*, Volume II, page 8.
32. 8 MODERN ELOQUENCE (1928) 54.
33. As an example, the March, 1956, issue of the NATIONAL REPUBLIC MAGAZINE carries an excellent article on the subject.

PREVIOUS PAPERS

1. Report of the Conference of Chief Justices at Pasadena, August, 1958.
2. "A Question of Intent," testimony relating to the original understanding of the meaning of the Fourteenth Amendment in terms of a State's power to operate racially separate public schools.
3. The Kentucky-Virginia Resolutions of 1798 and Madison's Report of 1799, in full text.
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Pittman, Robert Carter, and Virginia. Commission on Constitutional Government. Equality v. liberty: the eternal conflict: By R. Carter Pittman. The Virginia Commission on Constitutional Government, [1960]. Political Extremism and Radicalism, link.gale.com/apps/doc/VARADO609182515/PLEX?u=msul&sid=bookmark-PLEX&pg=1. Accessed 13 Apr. 2023.